

# SOUTHERN ENVIRONMENTAL LAW CENTER

THE CANDLER BUILDING  
127 PEACHTREE STREET, SUITE 605  
ATLANTA, GA 30303-1800

Telephone 404-521-9900  
Facsimile 404-521-9909  
selcga@selcga.org

Charlottesville, VA  
Chapel Hill, NC  
Atlanta, GA

September 22, 2009

**VIA U.S. Mail and FACSIMILE: (404) 562-8054**

Melvin Cruver  
U.S. EPA, Region 4  
AFC Bldg, 61 Forsyth Street., S.W.  
9th Floor (4PM/IF)  
Atlanta, GA 30303-8960

CTRL NO.	00770-09
Due:	10/23/09
SEARCHED	INDEXED
SERIALIZED	FILED
SEP 24 2009	FBI - ATLANTA
Special Instructions: FW	

**Re: Freedom of Information Act Request – Tired Creek Reservoir, Grady County, Georgia**

Dear Mr. Cruver:

Under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, the Southern Environmental Law Center ("SELC") requests all documents in the possession or control of the U.S. Environmental Protection Agency ("the EPA") that relate to the Tired Creek Reservoir, in Grady County, Georgia, otherwise known as the Grady County Public Fishing Lake (the "project"). The documents requested include but are not limited to:

1. Any alternatives analysis prepared by the applicant pursuant to the Clean Water Act;
2. Any communications between the applicant, its consultants and representatives, the Corps, the EPA, any state or federal agency, and any other party relating the project;
3. Any photographic analyses, including any photographs, maps, or drawings, that may have been prepared in relation to this project;
4. Any documents related to any visits to the site, including any handwritten information recorded during those visits; and
5. Any other documents relating to the project.

For the purposes of this request, the term "documents" includes all written, printed, recorded or electronic: materials, communications, correspondence, memoranda, notations, copies, diagrams, charts, maps, photographs, tables, spreadsheets, formulas, directives, observations, impressions, contracts, letters, messages and mail in the possession or control of the United States Environmental Protection Agency.

FOIA directs a responding agency to make a "determination" on any request within twenty (20) working days of receipt. See 5 U.S.C. § 552(a)(6)(A)(i). FOIA also requires the release of all reasonably segregable portions of a document that are themselves not exempt. 5 U.S.C. § 552(b). Should our requests be denied, we request that you inform us of the grounds for denial and the specific administrative appeal rights which are available. See 5 U.S.C. § 552(a)(6)(A)(i).

SELC is requesting photocopies without charge, or at a reduced charge, because reduction or waiver of fees would be in the public interest. A disclosure is in the public interest if (1) it is likely to contribute significantly to public understanding of the operations or activities of the government, and (2) it is not primarily in the commercial interest of the requester. The public interest standard of the fee waiver provision of the FOIA should be "liberally construed" in favor of waivers. McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d 1282, 1284 (9<sup>th</sup> Cir. 1987); Pederson v. Resolution Trust Corp., 847 F. Supp. 851, 855 (D.Colo.1994); Etlinger v. FBI, 596 F. Supp 867, 872 (D. Mass. 1984). The goal of the statute is to avoid the "roadblocks and technicalities which have been used by various Federal agencies to deny waivers...." Pederson, 847 F. Supp. at 855.

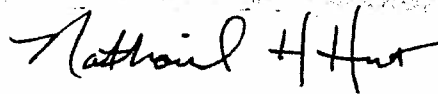
SELC is a 501(c)(3) non-profit organization with over 20 years of experience disseminating public information regarding Corps regulatory and operations issues. See 5 U.S.C. § 552 (a)(4)(A)(iii). SELC maintains a website that includes both general and topic-specific information regarding the matters with which SELC is involved. For example, SELC frequently publishes reports and issues press releases regarding its projects (See e.g., "Where are We Growing: Land Use and Transportation in the Greater Richmond Area," [http://www.southernenvironment.org/cases/vdot\\_reform/richmond\\_report.pdf](http://www.southernenvironment.org/cases/vdot_reform/richmond_report.pdf)). Lawyers at SELC are interviewed by the media to explain their work and its significance. (See e.g., "Judge Halts Landing Field," Raleigh News and Observer, February 19, 2005, <http://www.newsobserver.com/news/growth/story/2140513p-8522056c.html>). SELC's website contains documents generated by SELC for the specific purpose of educating the public on particular issues. (See e.g., "Smart Mobility Report: Review of Tri-County Parkway Location Study," [http://www.southernenvironment.org/newsroom/publications/smart\\_mobility\\_tri\\_county.pdf](http://www.southernenvironment.org/newsroom/publications/smart_mobility_tri_county.pdf)). SELC also assists the public in locating information relating to a particular topic by collecting and posting relevant information, documents, and links to other websites.

All of this information is available for free to any interested member of the public. SELC staff members also educate the public by speaking at conferences and other public meetings about environmental and natural resource issues in the Southeast. A fee waiver clearly will benefit the general public through increased notice and understanding of the operations of the government and of potential or proposed major policy incentives. SELC further certifies that disclosure of the information sought is not primarily in the commercial interest of the requester.

Should SELC's request for reduced or waived fees be denied, SELC is prepared to bear the reasonable duplication and search costs necessary to fulfill this request. However, I request you contact me before processing this request if the fee is expected to be in excess of \$25. SELC reserves its right to appeal a fee waiver or reduction denial.

If you have any questions regarding this request, please feel free to call me at 404-521-9900. Thank you for your prompt attention to this matter. We look forward to receiving the public records requested.

Sincerely,

A handwritten signature in cursive script, appearing to read "Nathaniel H. Hunt".

Nathaniel H. Hunt  
Associate Attorney



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
1200 Pennsylvania Avenue, NW (2822T)  
WASHINGTON, DC 20460

September 29, 2009

Mr. Nathaniel H. Hunt  
Southern Environmental Law Center  
127 Peachtree Street, Suite 605  
The Candler Building  
Atlanta, GA , 30303-1800  
United States

RE: Request No. 04-RIN-00770-09

Dear Mr. Hunt:

This is in response to your Freedom of Information Act (FOIA) request, 5 U.S.C. 552 seeking records related to all documents that related to the Tired Creek Reservoir, Grady County Georgia, otherwise known as the Grady County Public Fishing Lake and for a waiver of fees in connection with that request.

The FOIA directs agencies to furnish records without any charge or at a reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. 5 U.S.C. 552(a)(4)(A)(iii)(1994 & Supp. IV 1998).

Requests for fee waivers must be considered **on a case-by-case basis** and address the requirements for a fee waiver in sufficient detail for the agencies to make an informed decision. In determining whether the statutory requirements are met, agencies must consider six factors in sequence. The factors we still need from you are summarized below.

2. For the disclosure to be "likely to contribute" to an understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request.

3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requester or a narrow segment of interested persons. One's status as a representative of the news media alone is not enough.
4. The disclosure must contribute "significantly" to public understanding of government operations or activities.

Should you wish to receive a fee waiver, you must address, in sufficient detail, these six factors. You may send your response by email to [hq.foia@epa.gov](mailto:hq.foia@epa.gov), or by facsimile to this office (202) 566-2147. If we do not hear from you within 7 days from the date of this letter, we will deny your request for a waiver of fees based on insufficient justification. Records will be sent if you have provided assurance of payment should fees exceed \$25.00.

If you have any questions, please contact the Requester Service Center at [hq.foia@epa.gov](mailto:hq.foia@epa.gov), or call 202-566-1667.

Sincerely,

Larry F. Gottesman  
National FOIA Officer

FOIA Request No. 04-RIN-00770-09

Nate Hunt

to:

FOIA HQ

10/06/2009 09:28 AM

Cc:

Gabrielle Dean

Show Details

Mr. Gottesman,

Per our conversation this morning, October 6, 2009, the Southern Environmental Law Center requests an additional fourteen (14) days to respond to your September 29, 2009 letter regarding fee waivers. We therefore will respond to your letter by October 24, 2009. We would greatly appreciate an email confirming receipt and EPA's approval of this request.

Thank you for your time,

Nate

Nathaniel H. Hunt  
Associate Attorney  
Southern Environmental Law Center  
127 Peachtree St., Suite 605  
Atlanta, GA 30303  
404-521-9900

Re: FOIA Request No. 04-RIN-00770-09

FOIA HQ to: Nate Hunt

Sent by: Vivian Warden

Cc: Gabrielle Dean

10/06/2009 01:57 PM

Mr. Hunt: This is to confirm that EPA FOIA Office has received your e-mail and that Larry Gottesman, National FOIA Officer, has agreed to give you an extension. Please call us at 202-566-1667 if you have any questions. Thank you.

Nate Hunt

Mr. Gottesman, Per our conversation this mornin...

10/06/2009 09:28:29 AM

From: Nate Hunt <nhunt@selcga.org>  
To: FOIA HQ@EPA  
Cc: Gabrielle Dean <gdean@selcga.org>  
Date: 10/06/2009 09:28 AM  
Subject: FOIA Request No. 04-RIN-00770-09

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Thank you for your time,

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Nathaniel H. Hunt  
Associate Attorney  
Southern Environmental Law Center  
127 Peachtree St., Suite 605  
Atlanta, GA 30303  
404-521-9900



RE: FOIA Request No. 04-RIN-00770-09  
Nate Hunt to: FOIA HQ  
Cc: Gabrielle Dean

10/22/2009 10:23 AM

From: Nate Hunt <nhunt@selcga.org>  
To: FOIA HQ@EPA  
Cc: Gabrielle Dean <gdean@selcga.org>

Mr. Gottesman,

Below is a request for additional time to respond to your September 29, 2009 letter regarding fee waivers. I am requesting an additional seven (7) days to respond, so I would respond to your letter by October 31, 2009.

Thank you for your time,

Nate

Nathaniel H. Hunt  
Associate Attorney  
Southern Environmental Law Center  
127 Peachtree St., Suite 605  
Atlanta, GA 30303  
404-521-9900

-----Original Message-----

From: Warden.Vivian@epamail.epa.gov [mailto:Warden.Vivian@epamail.epa.gov] On Behalf Of FOIA\_HQ@epamail.epa.gov  
Sent: Tuesday, October 06, 2009 1:57 PM  
To: Nate Hunt  
Cc: Gabrielle Dean  
Subject: Re: FOIA Request No. 04-RIN-00770-09

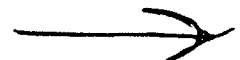
Mr. Hunt: This is to confirm that EPA FOIA Office has received your e-mail and that Larry Gottesman, National FOIA Officer, has agreed to give you an extension. Please call us at 202-566-1667 if you have any questions. Thank you.

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From: |  
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Nate Hunt <nhunt@selcga.org> |  
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To: |  
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FOIA HQ@EPA |



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|Gabrielle Dean <gdean@selcga.org>  
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Thank you for your time,

Nate

Nathaniel H. Hunt  
Associate Attorney  
Southern Environmental Law Center  
127 Peachtree St., Suite 605  
Atlanta, GA 30303  
404-521-9900

# SOUTHERN ENVIRONMENTAL LAW CENTER

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THE CANDLER BUILDING  
127 PEACHTREE STREET, SUITE 605  
ATLANTA, GA 30303-1840

Facsimile 404-521-9909

October 29, 2009

**Via Electronic Mail (hq.foia@epa.gov) and U.S. Mail**

OCT 29 2009

Larry F. Gottesman  
National FOIA Officer  
U. S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460

**Re: Request No. 04-RIN-00770-09**

Dear Mr. Gottesman:

This letter justifies Southern Environmental Law Center's (SELC) request for a fee waiver in connection with our Freedom of Information Act inquiry regarding the proposed Tired Creek Reservoir in Grady County, Georgia, otherwise known as the Grady County Public Fishing Lake. SELC, a regional public interest law and advocacy organization with numerous supporters from Georgia, has long been involved in monitoring the environmental impacts of federal government activities in Georgia and other southeastern states. SELC seeks documents from the U.S. Environmental Protection Agency (EPA) for which the disclosure is in the public interest and will likely and significantly contribute to the public's understanding to EPA's operations.

SELC unquestionably qualifies for a public interest fee waiver in this case. Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), "[d]ocuments shall be furnished without any charge or at a [reduced] charge . . . if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." It is well settled that "Congress intended that the public interest standard be liberally construed." *Eudey v. CIA*, 478 F. Supp. 1175, 1177 (D.D.C. 1979); *see also McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987); *Ettlinger v. FBI*, 596 F. Supp. 867, 872 (D. Mass. 1984).

Disclosure of the requested material will contribute significantly to the public's understanding of the activities of EPA and other state and federal agencies with the regard to the process of evaluating the environmental impacts of the proposed Grady County Public Fishing

Charlottesville • Chapel Hill • Atlanta • Asheville • Charleston • Richmond • Washington, DC

100% recycled paper

Lake. Specifically, the subject matter of the requested records concerns several identifiable operations or activities of the government, that is, the consideration by EPA and other agencies of a controversial proposal to build a large public reservoir at the cost of destruction of natural wetlands, the choice of location and size of the Grady County Public Fishing Lake, and the effects of these federal actions on the environment, a matter of great public concern. The location, size, and environmental impacts of the Grady County Public Fishing Lake—including an alternatives analysis—is a controversial issue of public concern.

Disclosure of the requested material will contribute significantly to the public's understanding of the aforementioned government activities. The requested records will, by definition, be informative of the agencies' actions in evaluating the environmental impacts of the proposed Grady County Public Fishing Lake. The requested records will reveal what information the EPA considered in evaluating the project, what records it generated in meeting its legal obligations under various environmental laws, such as the Clean Water Act, 33 U.S.C. § 1251 *et. seq.*, and the National Environmental Policy Act, 42 U.S.C. § 4321 *et. seq.*, and what information informed the government's decision regarding the size and location of the Grady County Public Fishing Lake. The requested records will additionally reveal the concerns EPA expressed to other federal agencies, such as the U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers, what response, if any, it received from other federal agencies regarding its concerns, and what part these environmental concerns played in the evaluative process.

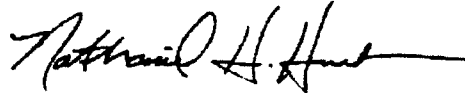
Furthermore, the disclosure of the requested materials will significantly contribute to the public's understanding of issues related to the Grady County Public Fishing Lake—as opposed to the understanding of the requester or a narrow segment of interested persons—because SELC will communicate the information to its client nonprofit organizations, its supporters, and to the public at large. Information gleaned from the requested records will be shared with other nonprofit entities and will also be disseminated to the public at large as appropriate to further the public-service mission of the SELC, through SELC's website and newsletters, editorials in local newspapers, comments at public meetings, and written comments regarding government actions. Accordingly, the disclosure will contribute significantly to public understanding of these government operations or activities.

Finally, the disclosure of the requested information will not serve SELC's commercial interest at all. In fact, SELC has no commercial interest at stake. SELC is a 501(c)(3) non-profit entity with public interest missions (described above) that, by definition, has no commercial interests. Because SELC does not have a commercial interest in the government operations and activities that are described above and that are the subject of the FOIA request, the disclosure of the information will not serve any commercial interests or benefit SELC financially. Thus, by definition, the public interest in the disclosure of the materials outweighs the requester's non-existent commercial interest.

Mr. Larry Gottesman  
October 29, 2009  
Page 3

Based on the factors discussed above, SELC believes a fee waiver in this case would be appropriate. Thank you for your prompt attention to this matter. We look forward to receiving the public records requested. If you have any other questions regarding this request, please feel free to call me at (404) 521-9900.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathaniel H. Hunt", with a long horizontal flourish extending to the right.

Nathaniel H. Hunt  
Associate Attorney

NHH/gnd



**Fee Waiver Justification for Request No. 04-RIN-00770-09**

Gabrielle Dean to: FOIA HQ

Cc: Nate Hunt

10/29/2009 12:23 PM

Dear Mr. Gottesman:

Attached please find our letter justifying the fee waiver for the above-reference FOIA request. A copy of this letter is also being provided in the U.S. Mail.

If you have any questions or concerns, please do not hesitate to contact us.

Sincerely,

Gabrielle Dean

Legal Assistant

*Gabrielle N. K. Dean, Legal Assistant  
Southern Environmental Law Center  
Georgia/Alabama Office  
The Candler Building  
127 Peachtree St. Suite 605  
Atlanta, GA 30303-1840  
Phone: (404) 521-9900  
Fax: (404) 521-9909*



<http://www.SouthernEnvironment.org> 10.29.09 Fee Waiver Justification to L. Gottesman.pdf



Fw: RE Fee waiver justification, Nathaniel Hunt, 04-RIN-00770-09  
Kindra Callahan to: Miriam Pressley  
Cc: Kindra Callahan

10/26/2009 08:47 AM

Miriam: Fee Waiver still on-hold (see message below.

Thanks,  
Kindra Callahan, Regional FOIA Officer  
U.S. Environmental Protection Agency  
61 Forsyth Street  
Atlanta, GA 30303  
404/562-8028 (telephone)  
404/562-8054 (fax)  
callahan.kindra@epa.gov

— Forwarded by Kindra Callahan/R4/USEPA/US on 10/26/2009 08:46 AM —

From: Vivian Warden/DC/USEPA/US  
To: r4foia@epa.gov, Kindra Callahan/R4/USEPA/US@EPA  
Date: 10/23/2009 09:42 AM  
Subject: RE Fee waiver justification, Nathaniel Hunt, 04-RIN-00770-09

This is to let you know that the requester, Nathaniel Hunt, 04-RIN-00770-09, has requested another extension to reply to our fee waiver justification request. He indicates that he will reply to us by October 31. The fee waiver determination will be made on or around November 3rd. You will be notified of the determination. Please call if you have any questions. Thank you.

Vivian Warden  
FOIA Specialist  
(202) 566-1663

FOIA and Privacy Branch  
(202) 566-1667 (main FOIA phone)  
(202) 566-2147 (FOIA fax)  
hq.foia@epa.gov



**Fw: Out of Office: FOIA Request No. 04-RIN-00770-09**  
FOIA HQ to: r4foia, Kindra Callahan  
Sent by: Vivian Warden

10/06/2009 02:47 PM

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----- Forwarded by Vivian Warden/DC/USEPA/US on 10/06/2009 02:47 PM -----

From: Nate Hunt <nhunt@selcga.org>  
To: FOIA HQ@EPA  
Date: 10/06/2009 02:24 PM  
Subject: Out of Office: FOIA Request No. 04-RIN-00770-09

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I will be out of the office Monday, October 5th and returning to the office on the afternoon of Thursday, October 8th.

# SOUTHERN ENVIRONMENTAL LAW CENTER

Telephone 404-521-9900

THE CANDLER BUILDING  
127 PEACHTREE STREET, SUITE 605  
ATLANTA, GA 30303-1840

Facsimile 404-521-9909

October 29, 2009

NOV 4 2009

**Via Electronic Mail (hq.foia@epa.gov) and U.S. Mail**

Larry F. Gottesman  
National FOIA Officer  
U. S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460

**Re: Request No. 04-RIN-00770-09**

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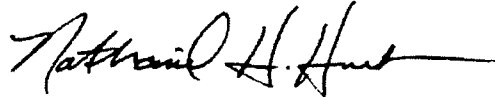
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Mr. Larry Gottesman  
October 29, 2009  
Page 3

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Sincerely,

A handwritten signature in black ink, appearing to read "Nathaniel H. Hunt", with a long horizontal flourish extending to the right.

Nathaniel H. Hunt  
Associate Attorney

NHH/gnd



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

November 3, 2009

OFFICE OF  
ENVIRONMENTAL INFORMATION

Mr. Nathaniel Hunt  
Southern Environmental Law Center  
The Candler Building  
127 Peachtree Street, Suite 605  
Atlanta, GA 30303-1800

RE: Request Number 04-RIN-00770-09

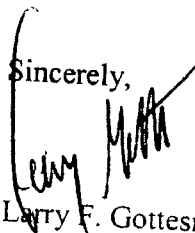
Dear Mr. Hunt:

This is in response to your request for a waiver of fees in connection with your Freedom of Information Act (FOIA), 5 U.S.C. 552 request. Your FOIA request is seeking a copy of records regarding the Tired Creek Reservoir, in Grady County Georgia, otherwise known as the Grady County Public Fishing Lake.

We have reviewed your fee waiver justification and based on the information you provided, we are granting your request for a fee waiver. However, this fee waiver does not include a waiver of fees for otherwise publically available records. The US Environmental Protection Agency Region 4 office in Atlanta, GA will be responding to your information request for the Agency.

If you have any questions concerning this letter, please contact Vivian Warden of my staff at (202) 566-1667.

Sincerely,

  
Larry F. Gottesman  
National FOIA Officer